

SUPREME COURT OF YUKON

Citation: *Gagnon v. Firth*, 2017 YKSC 26

Date: 20170406
S.C. No.: 16-A0144
Registry: Whitehorse

BETWEEN:

RAYMOND GAGNON

PLAINTIFF

AND

BRAD FIRTH

DEFENDANT

Before Mr. Justice J. Menzies

Appearances:

Michelle Chan and James R. Tucker
Brad Firth

Counsel for the Plaintiff
No one appearing

REASONS FOR DECISION

[1] MENZIES J. (Oral): Raymond Gagnon is a resident of the City of Whitehorse, Yukon Territory. On August 11, 1995, Mr. Gagnon married Irene Korte and they lived together until the time of her death on February 22, 2015, a period of just under 20 years. As apparently is normal for anyone who dies outside of a hospital in the Yukon, the Coroner conducted an inquiry into Ms. Korte's death and determined that it was accidental.

[2] The defendant, Brad Firth, is Ms. Korte's brother. He is also known as "Caribou Legs", since he is a long-distance runner. In fact, long-distance running forms up a large part of his persona, as far as I could determine from the evidence.

[3] In May of 2016, Mr. Firth, or Caribou Legs, began a highly publicized cross-country run to raise awareness for the issue of missing and murdered indigenous women.

[4] In the period from July of 2016 through November of 2016, Mr. Firth was quoted in at least 16 publications, which ran from both national to regional scales throughout Canada, claiming that his sister, Irene Korte, had died as a result of domestic violence inflicted on her by the plaintiff, Mr. Gagnon. In at least one of those publications, he went into detail as to how Mr. Gagnon caused her death.

[5] In December of 2016, the plaintiff, Mr. Gagnon, brought an action in defamation against Mr. Firth.

[6] On March 2, 2017, default judgment was granted for Mr. Gagnon as against Mr. Firth confirming the 16 occasions that Mr. Gagnon claims that Mr. Firth had defamed him. I am aware that as a result of the nature of the scale of the run across Canada there may have been other defamatory statements that Mr. Gagnon had been unable to find.

[7] Mr. Gagnon now comes to this Court and asks the Court to make a determination of damages.

[8] The factors to be considered in the calculation of damages for a claim of defamation were set out quite clearly in the decision of *Leenen v. Canadian*

Broadcasting Corporation, [2000] O.J. No. 1359, at para. 205. The Court said:

In attempting to arrive at the appropriate level of general damages in a defamation case, one must always be aware of not only the damage inflicted to a person's reputation but also the fact that once damaged a reputation is very difficult to restore. Always mindful of the fine balance between freedom of speech and the protection of reputation, once the

scales have been tipped through defamation, a plaintiff is entitled to be compensated not only for the injury caused by the damage to his integrity within his broad community but also for the suffering occasioned by the defamation. ... While not all inclusive, some of these factors are as follows:

- (a) the seriousness of the defamatory statement;
- (b) the identity of the accuser;
- (c) the breadth of the distribution of the publication of the libel;
- (d) republication of the libel;
- (e) the failure to give the audience both sides of the picture and not presenting a balanced review;
- (f) the desire to increase one's professional reputation or to increase ratings of a particular program;
- (g) the conduct of the defendant and defendant's counsel through to the end of trial;
- (h) the absence or refusal of any retraction or apology;
- (i) the failure to establish a plea of justification.

[9] Not all of these apply to this particular case, but most of them do.

Seriousness of The Defamatory Statement

[10] The allegation of Caribou Legs, or Mr. Firth, is that Mr. Gagnon killed his wife, Irene Korte. I do not know how this type of allegation can be seen as anything but a serious defamatory allegation. This is especially so, given the climate in which the statements were made by Mr. Firth.

[11] As is long overdue, politicians have finally begun to address the issue of missing and murdered indigenous women in Canada. It is an issue that instantly raises consternation and negative reaction by the collective psyche of Canadian society. It is not lost on the Court that Mr. Gagnon is white while his wife was First Nation. Mr. Firth is also First Nation.

[12] An allegation made by the brother of a First Nation woman against a white individual, such as Mr. Gagnon, that he was personally responsible through domestic violence for the killing of his wife can only have an extremely negative effect upon Mr. Gagnon's personal reputation not only in his home community of Whitehorse but also throughout the Yukon Territory and, indeed, throughout Canada. This is, in fact, an extremely serious allegation made by Mr. Firth.

Identity of The Accuser

[13] The accuser here is Irene Korte's brother. However, more importantly for this action, he is someone who has created a national persona for himself as an activist on the issue of missing and murdered indigenous women. As a result, his words and his allegations have received national attention, in addition to carrying a certain level of credibility as coming from someone who is supposedly familiar with the issue.

Breadth of The Distribution of The Publication

[14] The allegations against Mr. Gagnon were made in the course of a cross-country run to raise awareness of the issue of missing and murdered aboriginal women. Some of the interviews were conducted with national news media agencies, including the CBC and CTV. Some were done with more regional publications, for example, *The News* (New Glasgow) and the *King County Advertiser*, among others. Many were published

on Internet sites, such as Y95.5 CJLS Yarmouth and radio FM4. Some were published on First Nation websites, such as the Qalipu First Nation website and at least one of the allegations were published in *Running Magazine*.

[15] Defamation takes on new scales in the day and age of the Internet. Once published, one can never be assured that these allegations will ever be totally removed from the Internet. The breadth and the distribution of the defamation was nationwide and repeated on numerous occasions, even repeated after the plaintiff asked the defendant to stop the allegations.

Failure to Give The Audience Both Sides of The Picture And Not Presenting A Balanced Review

[16] Mr. Firth made no attempt at all to explain Mr. Gagnon's side of disposition or to give Mr. Gagnon an opportunity for him to explain it. Mr. Firth made the allegation repeatedly without any attempt at all to put the matter in a fair light for Mr. Gagnon.

Desire to Increase One's Professional Reputation or to Increase Ratings of a Particular Program

[17] The background of this case is that Mr. Firth decided to make a cross-country run to raise awareness on the issue of missing and murdered indigenous women. The issue he was advocating is, in fact, laudatory and he should be congratulated on that. It is an issue that has vexed First Nation people since the coming of the Europeans.

[18] However, the Court has to consider what would possess Mr. Firth to make these unfounded allegations against Mr. Gagnon. Mr. Gagnon has presented evidence to this Court that he and his deceased wife, Irene Korte, had very little, if anything, to do with Mr. Firth over the course of their married life.

[19] I acknowledge that Mr. Firth may harbour his suspicions but the issue here is that he has nothing, nothing presented or even attempted to be presented upon which to base these allegations against Mr. Gagnon. The Chief Coroner has ruled her death as accidental. There is no way for Mr. Firth to be able to in any way try to establish that Mr. Gagnon was responsible for Irene Korte's death. No plea of justification has been made or proven in this Court.

[20] I can only speculate that being the brother of an indigenous woman who may have been killed by her white husband would serve to enhance Mr. Firth's credibility as an advocate for his chosen cause. I am also sure that by portraying himself as someone who is a victim of this awful tragedy would enhance his ability to raise funds for this cause.

[21] Accordingly, I can only find that the reason for which he decided to make these allegations was, in fact, to enhance his own credibility and to increase the popularity or the effect of his own campaign, all this at the cost of Mr. Gagnon and his reputation.

Absence or Refusal to Issue a Retraction or Apology

[22] There is no evidence before this Court that Mr. Firth has even offered to retract his statements or to apologize to the plaintiff Gagnon.

[23] Having considered the factors as set out by the Ontario courts, I can only come to the conclusion that this defamation here is a serious one. It was a serious attack on the plaintiff's reputation on a massive and national scale.

[24] The defendant Firth used his persona and his media soapbox to attack and cause harm to Mr. Gagnon's reputation for his own purposes.

[25] It must be particularly vexing for Mr. Gagnon that the allegation is one of being physical violent to his dearly departed wife.

[26] On the other hand, Mr. Gagnon does not share access to that same widespread media. Like most of us, he is an ordinary citizen who cannot compete with Mr. Firth's ability to attract national media attention. In other words, he was defenceless to this attack.

General Damages

[27] Mr. Gagnon, through his counsel, asked for \$45,000 in general damages. I have read the cases that have been provided by counsel and I have little hesitation in endorsing that request. Damages will be set at \$45,000.

Aggravated Damages

[28] In assessing aggravated damages, the Court may look at the conduct of the defendant, Mr. Firth, and his state of mind in the publication of the defamation. As I have said before in this matter, Mr. Firth was on a highly publicized campaign to raise awareness for a *bona fide* issue.

[29] However, to further his own cause and to enhance his own credibility as a spokesperson for this cause on a national stage, Mr. Firth invoked the death of his sister and without justification lay blame for same on Mr. Gagnon. I can only presume he did so knowingly and with malice.

[30] Even if he did not, at the very least he was reckless and without concern for the damage and grief he would be causing to Mr. Gagnon. It is possible on the first occasion that he may have misspoke himself, but to repeat it 16 times shows a clear premeditation and a clear decision to raise this blame by accusing Mr. Gagnon on

numerous occasions to numerous media outlets that he would have known would be published throughout the country.

[31] The actions were done in a calculated manner to further Mr. Firth's own ends without any consideration for the damage done to the plaintiff. Mr. Firth also used his public persona to defame someone who he had to know could never hope to be able to respond on an equal footing. This is clearly a case for punitive damages.

[32] The plaintiff has asked for \$10,000. Considering all the circumstances, I have no hesitation in making that award as requested. There will be judgment for \$10,000 for punitive damages.

Pre-Judgment Interest

[33] Damages in this matter are unliquidated damages. Counsel assures me that the *Judicature Act*, R.S.Y. 2002, c. 128, provides that interest can be provided on unliquidated damages. However, I am not convinced that in a case such as this, where there is no way of determining what the damages could be prior to a judge making a decision, that pre-judgment interest is not appropriate.

Costs

[34] Mr. Gagnon asked for an order of costs. His counsel has filed a bill of costs outlining and claiming legal costs in the amount of \$3,696 and disbursements in the amount of \$1,787.28 for a total of \$5,483.28. I have no hesitation in granting judgment accordingly.

SUMMARY

[35] Accordingly, the judgment will be in the amount of \$45,000 for general damages; aggravated damages in the amount of \$10,000; costs in the amount of \$5,483.28.

[36] This judgment will bear interest from today's date at a rate set pursuant to s. 36 of the *Judicature Act*.

MENZIES J.